

SENATE BILL 440

By Kilby

AN ACT to amend Tennessee Code Annotated, Title 46,
Chapter 1, Part 2, relative to financial
management of cemeteries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 46-1-201, is amended by deleting the language "improvement care trust fund" and by substituting instead the language "improvement care trust fund or certificate of deposit".

SECTION 2. Tennessee Code Annotated, Section 46-1-203(a), is amended in subdivision (2) by deleting the language "trust agreement in accordance with § 46-1-204" and by substituting instead the language "trust agreement or obtaining a certificate of deposit in accordance with § 46-1-204".

SECTION 3. Tennessee Code Annotated, Section 46-1-203(a), is further amended in subdivision (3) by deleting the language "Depositing either cash or" and by substituting instead the language "Obtaining a certificate of deposit, depositing cash or".

SECTION 4. Tennessee Code Annotated, Section 46-1-204(a), is amended in the first sentence by deleting the language "in this state shall establish" and by substituting instead the language "in this state shall obtain a certificate of deposit or shall establish".

SECTION 5. Tennessee Code Annotated, Section 46-1-204, is amended by designating the language of subsection (a), as amended, as subdivision (a)(1) and by adding a new subdivision thereto, as follows:

(2) In lieu of a trust fund as provided by this part for the improvement care and maintenance of a cemetery, a cemetery company may obtain a certificate of deposit in an amount prescribed by § 46-1-203. Such certificate of deposit shall be payable as the commissioner directs. Such certificates of deposit shall be in any national or state bank

in the United States whose deposits are insured by the federal deposit insurance corporation, at the prevailing rate of interest of such certificates. All interest and proceeds from certificates of deposit shall only be used for the purposes provided in subsection (b) of this section. The certificate of deposit may not be redeemed without the authorization of the commissioner. The commissioner shall ensure the certificate of deposit provides adequate financial security to comply with the requirements of this chapter. Ownership of the certificate of deposit may be transferred upon the change of ownership of the cemetery and upon the commissioner's satisfaction that the new owner complies with the provisions of this chapter.

SECTION 6. Tennessee Code Annotated, Title 46, Chapter 1, Part 2, is amended by adding a new section thereto, as follows:

Section 46-1-218.

(a) For the sale of land for non-cemetery purposes, the commissioner may order the cemetery company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in a certificate of deposit or the cemetery's pre-need merchandise and services trust fund, or both, within thirty (30) days after the disposition, if there is a deficiency in either fund. The order may not exceed the actual amount of the deficiency in either or both funds.

(b) Notwithstanding any provision in this chapter to the contrary, any cemetery company depositing more than the required amounts in a certificate of deposit, in accordance with prior statutory requirements or the provisions of its charter or contracts, shall be authorized to continue to do so; provided, that deliberate obtaining of additional or larger certificates of deposit shall not be credited toward any future liability.

(c) Every cemetery company shall be permitted to charge a fee for the memorial care of every commodity installed in the cemetery. The fee shall not exceed twenty-three

cents (23¢) per square inch of the ground covered by the commodity. At the end of each calendar year, the cemetery company shall be permitted to increase its fee for the memorial care of commodities by no more than the percentage representing the consumer price index at the end of that calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery company for installation of the commodity. The charge for memorial care of a commodity shall be the same to all, regardless of the source of the commodity.

(d) The setting aside and deposit provided for in § 46-1-204 (b)(3)(A) shall be made by the cemetery company not later than thirty (30) days after the close of the month in which the final payment on the purchase price of each lot, grave space, crypt or niche, the final payment for the general or special care of the lot, grave space, crypt, or niche, the final payment for the memorial care of a commodity, or the final payment of a family mausoleum, memorial, marker or monument is received. The amounts deposited shall be held by the trustee of the improvement care funds of the cemetery in trust and perpetuity for the specific purposes stated in the written agreement. All deposits with a trustee by a cemetery company under this part shall be in cash only.

(e)

(1) As used in this subsection (e), unless the context otherwise requires “net income” means the collected dividends, interest and other income of the certificate of deposit reduced by taxes on income and fees.

(2) The net income of each certificate of deposit shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company for the improvement and care, as defined in § 46-1-102, of the cemetery or separate geographical location of the cemetery for which the certificate of deposit was established and for no other purpose.

(3) While a cemetery for which a certificate of deposit has been funded is not being operated by its owner, the commissioner may disburse net income from the certificate of deposit to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery.

(f) The certificate of deposit shall not be a part of the assets of any cemetery company operating under this part and the certificate of deposit shall not be subject to the debts of the cemetery company.

SECTION 7. Tennessee Code Annotated, Section 46-1-205, is amended in the first sentence by deleting the language "the improvement care trust fund" and by substituting instead the language "an improvement care trust fund or obtained a certificate of deposit".

SECTION 8. Tennessee Code Annotated, Section 46-1-205, is further amended by deleting the language "any improvement care trust fund" and by substituting instead the language "any improvement care trust fund or certificate of deposit".

SECTION 9. Tennessee Code Annotated, Section 46-1-205, is further amended by deleting the period at the end of the section and by substituting instead the following:

, or to the purchase of an additional certificate of deposit, as appropriate.

SECTION 10. Tennessee Code Annotated, Section 46-1-215(a), is amended by adding the following new subdivision thereto:

() The amounts given to obtain certificates of deposit and income earned on such certificates of deposit;

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.